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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,114	11/09/2001	Edward Pabst	36657-00400	2362

7590 09/23/2003

Milbank, Tweed, Hadley & McCloy LLP
One Chase Manhattan Plaza
New York, NY 10005-1413

EXAMINER

SMITH, JEFFREY A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/045,114

Applicant(s)

PABST ET AL.

Examiner

Jeffrey A. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The Response deposited 30 July 2003 has been considered. The Response includes an amendment to claims 1 and 29. Claims 1-60 are pending and an action on the merits follows.

Claim Objections

Claims 5 and 33 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Specifically, the recitations of claims 5 and 33 appear redundant of recitations already presented in claims 1 and 29, respectively, as now amended.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-5, 8, 9, 13, 14, 17-21, 23-33, 36, 37, 41, 42, 45-49, and 51-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Rose (U.S. Patent No. 5,930,769).

Rose discloses a method and system for allowing a user to reorder an article fitted to a human (a pair of pants, for example (col. 3, lines 54-56)). A user first enters personal information which is updateable and alterable into a database (col. 3, lines 40-47). The personal information is uploaded to a central system in the form of an HTML page which the user fills out (col. 3, 23-27). Personal information comprises data relating to a user's apparel requirements and desires (col. 4, lines 6-9). Visual aids assist the user (see Fig. 4). The user is also assisted by a virtual fashion consultant (col. 4, lines 26-30). Reorder is by virtue of the personal information being archived as a permanent record in the database, obviating the need for redundant input the next time the user accesses the system (col. 3, lines 42-45). Many types of apparel are selectable (col. 6, lines 44-50). The user may adjust the desired article by increments (col. 7, lines 62-67). One or more selection interfaces allow a user to customize the article. Features inventory comprises fabric selection, color selection, and article style (col. 4, lines 48-51; col. 7, lines 19-23). A reorder recap is provided and includes a list of customizations

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to the article (col. 8, lines 16-23). An ordering option allows the user to place an order via the internet (col. 8, lines 32-34; col. 3, lines 9-16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 7, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (U.S. Patent No. 5,930,769).

Rose does not disclose a slider or a ruler to allow the user to adjust the article in an incremental amount. As discussed above, Rose discloses article adjustment, for example, adjustments to size in incremental amounts. The Rose environment allows selections to be input using a graphical interface and a mouse or keyboard (col. 6, lines 50-55). It would have been obvious to one of ordinary skill in the art to have provided the method and system of Rose to have included a

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ruler or slider amid the interface environment already disclosed by Rose as such ruler or slider would have amounted to a functionally equivalent adjustment mechanism for allowing the user to adjust the article incrementally--a functionality previously disclosed by Rose.

Claims 10-12, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (U.S. Patent No. 5,930,769) in view of Meyer, Harvey: "Many Happy Returns", The Journal of Business strategy, Boston, Volume 20, Issue 4, July/August 1999, pages 27-31 (hereafter "Meyer").

Rose does not disclose a customer order history.

Meyer reports that Office Depot's "online shoppers are allowed to review the list of products they purchased earlier".

It would have been obvious to one of ordinary skill in the art to have provided the method and system of Rose to have the functionality of allowing users to review a list of previously ordered articles (i.e. a customer order history) in order to have permitted the customer a mechanism for recalling certain articles which they may then decide to reorder as either un-re-altered or re-altered. A mechanism of this type, as reported by Meyer, would "help to make sure customers get the right product the first time, and that helps reduce returns".

Claims 15, 16, 22, 43, 44, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (U.S. Patent No. 5,930,769) in view of Slatalla, Michelle: "A Personal Tailor For Denimed Masses", The New York Times, New York NY, Late Edition (East Coast), July 27, 2000, page G4 (hereafter "Slatalla").

Rose does not disclose that article style comprises front panel, cuff style, or leg-opening.

Slatalla reports that "IC3D offers customers the option of specifying every detail--from button color, to fabric weight to the number of pockets to how wide the ankle opening should be." Slatalla further reports that options such as "fabric, color, and cut" may be selected and submitted together with various body measurements (such as "rise") and other features such as thread color and button and pocket preference. The customer then places the order and the article is delivered.

It would have been obvious to one of ordinary skill in the art to have provided the method and system of Rose to have included a mechanism for allowing the user to have specified every detail (including front panel, cuff style, and leg-opening) of the article already taught by Rose in order that the user may have more complete control over the design aspects of

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the article--thereby increasing the user's satisfaction with the final article (note Slatalla quoting Peter del Rio that "in the four years [Ic3d.com] has been selling online, 95 percent of customers are 'totally happy'").

Response to Arguments

Applicant's arguments filed 30 June 2003 have been fully considered but they are not persuasive.

Applicant remarks that "[t]he term 'incremental', as used in the specification and claims of the pending patent application, is intended to indicate that the visual aid allows the user to adjust the article only by particular increments--i.e., discrete amounts--rather than continuously."

The Examiner notes that such definition is not present in the application as originally filed. As such, the Examiner will not rely upon this definition in distinguishing the instant invention from the prior art. The Examiner has relied upon Rose which discloses a visual aid that allows the user to adjust the article in an incremental amount. Such interpretation is consistent with both the original disclosure and the claims as now amended. The user of the Rose method and system may adjust the article in increments of the units of measure discussed at column 7, lines 65-67.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is 703-308-3588. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the

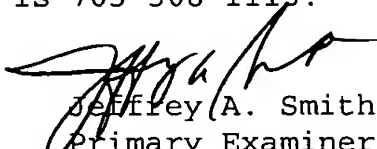
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organization where this application or proceeding is assigned is
(703) 872-9306.

Any inquiry of a general nature or relating to the status
of this application or proceeding should be directed to the
receptionist whose telephone number is 703-308-1113.


Jeffrey A. Smith
Primary Examiner
Art Unit 3625

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